***THE HON'BLE SRI JUSTICE N.V. RAMANA**

+Writ Petition No. 41 of 2007

% Dated 02.02.2007

Yamala Srinivasa Rao, S/o Y.V. Appa Rao, Hindu, aged 44 years, Occ: Computer Terminal Operator (CTO), Central Bank of India, R/o D.No.54-20/2-114/1, Mithranjali, Main Road, Subbarao Colony, Vijayawada, Krishna District.

..... PETITIONER

VERSUS

$ The Senior Manager, Central Bank of India, Benz Circle Branch,
Vijayawada, Krishna District and others.

.....RESPONDENTS

! Counsel for Petitioner: Sri K. Ravindra Kumar

^ Counsel for Respondents: Sri C.V. Rajiv Reddy

< GIST:

> HEAD NOTE:

? Cases referred:

1. **AIR 1993 SC 2444**
2. **(2001) 8 SCC 574**
3. **AIR 1984 SC 364**
4. **(1959) 359 US 535**
5. **AIR 1979 SC 1628**

THE HON'BLE SRI JUSTICE N.V. RAMANA

W.P. No. 41 of 2007

O r d e r:

The petitioner, who is working as Computer Terminal Operator (CTO) in Central Bank of India (Bank) at Vijayawada, is the State President of the Central Bank of India Employees Association, Andhra Pradesh, which is affiliated to the All India Central Bank Employees Federation. The petitioner, since his appointment in 1985, has served the Bank at their various branches. While so, the petitioner who was working in the Regional Office of the Bank at Vijayawada, was by office order dated 20.10.2006 of the 2nd respondent-Regional Manager, was transferred to their branch at Benz Circle on rotation. While the petitioner was working at Benz Circle branch, the 2nd Regional Manager, by orders dated 28.12.2006 again transferred the petitioner to their branch at Narsaraopet. Impugning the said transfer order, the petitioner filed the present writ petition.

The learned counsel for the petitioner submitted that the petitioner, who was working in the Regional Office at Vijayawada, by order dated 20.10.2006 of the 2nd respondent-Regional Manager, was transferred to their branch at Benz Circle on rotation. He submits that there is no transfer policy for transfer of employees of clerical cadre throughout the country, and transfers have to be effected only on rotation from branch level to regional level, as envisaged by Circular dated 30.10.1996.

He submits that the petitioner is the President of the Central Bank of India Employees Association, Andhra Pradesh, which is affiliated to the All India Central Bank Employees

Federation, and as per the policy guidelines, issued in 1992, as reiterated by the Chairperson and Managing Director in his Circular dated 07.07.2006, the office bearers of award staff union can be transferred/rotated within the city, but ignoring this, the 2nd respondent-Regional Manager, just within two months of his transfer from the Regional Office to Benz Circle branch, has issued the impugned office order dated 28.12.2006 transferring him from Benz Circle branch to Narsaraopet branch, and more so without assigning any reasons.

The learned counsel for the petitioner submits that the impugned office order of transfer is the result of vindictive attitude on the part of the respondents, and has been issued as a sequel to the demonstration, which the petitioner along with other employees held at the branch after the office hours in protest of the Circular No. 6, dated 25.12.2006, issued by the respondents.

The learned counsel for the petitioner further submitted that the transfer of the petitioner having been made in violation of the policy guidelines issued by the Personnel Department in 1992, the Memorandum of Settlement dated 07.11.2006 and the redeployment-cum-transfer policy dated 15.11.2006, is liable to be set aside. In support of his contention that the transfer order made in violation of the transfer policy, is liable to be set aside, he placed reliance on the judgment of a Division Bench of this Court in W.A.
No. 1055 of 2005, dated 20.06.2005. He submitted that the impugned transfer order is also fraught with *mala fides*, and prayed that it be set aside and the writ petition be allowed.

The respondents filed counter. The learned Standing Counsel for the respondents-Bank while reiterating the counter

averments submitted that the petitioner was transferred from the Regional Office at Vijayawada to Benz Circle branch on rotation on 20.10.2006.

He submitted that pursuant to automation, a Memorandum of Settlement dated 02.06.2005 was entered into by the managements of 50 banks and representatives of various Trade Unions and award Staff Unions, and as per the said Memorandum of Settlement, which came into effect from 07.11.2006, surplus staff can be deployed at the deficit branches, and having regard to the necessity, they may be posted outside the district within a distance of 100 kilometers, and even though the petitioner is the President of the Central Bank of India Employees Association, yet he is not exempted from being transferred outside the district.

He submitted that the petitioner being an employee of the Bank, has no vested right to seek his retention at a particular place, and transfer being a condition of service, and the petitioner having been transferred keeping in view the necessity and exigencies of the Bank, and he having been found in surplus in Benz Circle, no exception can be taken to the impugned transfer order, and more so when it was passed in terms of the redeployment policy. In support of his argument that transfer order cannot be interfered with, he placed reliance on the judgments of the apex Court in **Union of India v. S.L. Abbas**[1] and **National Hydroelectric Power Corporation Ltd. v. Shri Bhagwan**[2].

Heard the learned counsel for the petitioner and the learned Standing Counsel for the respondents-Central Bank of India, and perused the material on record.

The writ Courts, normally, are reluctant to interfere in

matters of transfer, for it is for the appropriate authority to decide as to who should be posted where having regard to the administrative necessities and exigencies. However, since it is contention of the petitioner that he was transferred on rotation just two months prior to the present impugned transfer, and the present impugned transfer is a sequel to the demonstration which he had held along with other employees, protesting the issuance of a Circular, and that it has been made in violation of the Memorandum of Settlements, entered into by the respondents-Bank with the representatives of the various Trade Unions, including the award staff Union, to which the petitioner is a President, it is appropriate that the present transfer of the petitioner be examined in the light of the events that took place prior to the transfer of the petitioner, the Memorandum of Settlements, entered into by the respondents-Bank with the various Trade Unions, including the award staff Union and the Circular, issued by the respondents-Bank, governing deployment of clerical staff from surplus to deficit centers.

The petitioner, who is working as Computer Terminal Operator with the respondents-Bank, admittedly, is the State President of the Central Bank of India Employees Association, Andhra Pradesh which is affiliated to the All India Central Bank Employees Federation. As per the policy guidelines issued in June 1992 by the Personnel Department of the Bank, and as reiterated by the Chairperson and Managing Director of the Bank in his letter dated 07.07.2006, the office bearers of the award staff union can only be transferred/rotated within the same city. In terms of the said policy guidelines, and as is evident from the office order dated 20.10.2006, issued by the 2nd respondent-Regional Manager, the petitioner while working in the Regional Office, Vijayawada, was transferred on rotation

to their Benz Circle branch. Though the petitioner was transferred on rotation, curiously the 2nd respondent-Regional Manager, again issued another office order dated 28.12.2006, transferring the petitioner from Benz Circle branch to Narsaraopet branch, which the petitioner contends was made as a sequel to his staging demonstration along with other employees protesting the issuance of Circular dated 25.12.2006 by the respondents.

Though the respondents-Bank contends that the petitioner has been transferred in terms of the guidelines issued in Circular dated 15.11.2006, with regard to deployment of clerical staff from surplus to deficit centers as per the provisions of the VIII Bi-Partite Settlement (Memorandum of Understanding), the fact remains, as per the said guidelines, all Zonal Managers should identify surplus and deficit centers (in respect of clerical staff) in consultation with the concerned Regional Managers. The said circular guidelines *inter alia* require the Zonal Managers to identify the number of clerical staff who can be redeployed under the norms, and upon undertaking such an exercise, they should submit to the General Manager, the details/information, such as the number of centers identified as surplus and deficit (region-wise and district-wise), number of clerical staff identified for redeployment within the District and the number of clerical staff identified for redeployment outside the District, but upto a distance not exceeding 100 kilometers, as per the provisions of the norms.

The above Circular dated 15.11.2006, in fact, came to be issued in pursuance of Memorandum of Settlement dated 07.11.2006, which was an offshoot of the Memorandum of

Settlement dated 02.06.2005 entered into between the Managements of 50 Banks as represented by the Indian Banks' Association and their workmen, under Sections 2(p) and 18(1) of the Industrial Disputes Act, 1947 read with Rule 58 of the Industrial Disputes (Central) Rules, 1957. Schedule VI appended to the Memorandum of Settlement dated 02.06.2005, deals with deployment of staff, and *inter alia* provides guidelines for the purpose. Clauses (i) to (iii) thereof reads as follows:

> (i) A workman in the non-subordinate cadre is liable to be deployed anywhere within a 'District' irrespective of the distance involved.
>
> (ii) In cases necessitating deployment outside the District, the workman concerned may be deployed to any branch/office of the bank situated outside the District upto a distance not exceeding 100 Km from his present place of posting.
>
> (iii) Bank may identify, based on length of stay at the centre/branch/office, the number of workmen employees, to be redeployed from each centre/branch/office to meet its requirements.

From a reading of the above it would become clear that as per clause (i) a workman in the non-subordinate cadre is liable to be deployed anywhere within a 'District' irrespective of the distance involved, as per clause (ii) in cases necessitating deployment outside the District, the workman concerned may be deployed to any branch/office of the bank situated outside the District upto a distance not exceeding 100 kilometers, from his present place of posting, and as per clause (iii), bank may identify, based on length of stay at the center/branch/office, the number of workmen/employees, to be redeployed from each center/branch/office to meet its requirement.

The afore-quoted clauses, do find a place in the Memorandum of Settlement dated 07.11.2006, entered into by the respondents-Bank with the All India Central Bank Employees' Federation, which in fact, was entered into in pursuance of the Memorandum of Settlement dated 02.06.2005.

No material has been placed by the respondents-bank

before this Court to show that the exercise as prescribed under Schedule VI to the Memorandum of Settlement dated 02.06.2006 or under the Memorandum of Settlement dated 07.11.2006 or under the Circular dated 15.11.2006, was undertaken before transferring the petitioner from Benz Circle branch to Narsaraopet branch, and in the absence of any details/information placed by the respondents to show as to how many employees/centers were found to be surplus/deficit, what is the length of service of the employees at the center/branch/office, who are sought to be transferred, and how many were required to be transferred within the District and outside the District, the impugned transfer order of the petitioner, transferring him from Benz Circle branch to Narsaraopet branch, must be presumed to have been made in violation of the Memorandum of Settlements dated 02.06.2005 and 07.11.2006, and the guidelines issued by the respondents in their Circular dated 15.11.2006 for redeployment of clerical staff from surplus to deficit centers.

Admittedly, the Memorandum of Settlement dated 07.11.2006, entered into by and between the Management of Central Bank of India and All India Central Bank Employees' Federation, was entered into in pursuance of the Memorandum of Settlement (Bi-partite Settlement) dated 02.06.2005 between the Managements of 50 Banks as represented by the Indian Banks' Association and their workmen and others, under Sections 2(p) and 18(1) of the Industrial Disputes Act, 1947 read with Rule 58 of the Industrial Disputes (Central) Rules, 1957. This is evident from the fact that the Memorandum of Understanding dated 07.11.2006, in Clause 3 makes a reference to the Memorandum of Understanding dated 02.06.2005, which

states that "WHEREAS the above industry-level Bipartite Settlement also provides *inter alia* that any existing bank-level settlement on transfer or deployment whose provisions are restrictive and not up to the minimum provisions on deployment as mentioned therein, will be modified/terminated as per procedure under the Industrial Disputes Act so as to give effect to the provisions on deployment as agreed upon under the industry-level Bi-partite Settlement dated 2nd June, 2005". Section 2(p) of the Industrial Disputes Act, 1947 defines "settlement", and such settlement arrived at between the employer and workman otherwise than in the course of conciliation proceedings, is binding on the parties to the agreement under Section 18(1) of the Industrial Disputes Act, 1947.

Since the settlement entered into by the employer (Bank) and workmen (Association) under Section 2(p) of the Industrial Disputes Act, 1947 has binding effect on the parties to the agreement under Section 18(1) of the Industrial Disputes Act, the respondents-Bank having entered into such a settlement, under Sections 2(p) and 18(1) of the Industrial Disputes Act, with the Trade Unions and award staff Union, cannot resort to transfer of employees of award staff Union, in violation of the said Memorandum of Settlements. In fact, a Division Bench of this Court in W.A. No. 1055 of 2006, dated 20.06.2005 in the case of transfer of an employee of State Bank of India, set aside the order of transfer on the ground that it has been made in violation of the clauses of the Memorandum of Settlement.

What would be the effect of contravention of the Bye-laws, was considered by the apex Court in **B.S. Minhas v. Indian Statistical Institute**[3]. The apex Court in the said

case was concerned with the appointment made in contravention of the Bye-law. The apex Court quoted the rule enunciated by Mr. Justice Frankfurther in **Vitraelli v. Seaton**[4], that "An executive agency must be rigorously held to the standards by which it professes its action to be judged" and observed that if bye-laws have been framed, then it was obligatory on the part of the authorities to follow them in the conduct of the affairs to avoid arbitrariness and since appointment was made in breach of the bye-laws framed, the apex Court held that the appointment was illegal. In the instant case, as noted supra, the 2nd respondent-Regional Manager has transferred the petitioner in violation of the Memorandum of Settlements entered into by the management of the Bank with the representatives of the Trade Unions and the award staff Union and also the very Circular dated 15.11.2006, issued by them with regard to identifying the surplus staff.

The petitioner, admittedly, was transferred on rotation on 20.10.2006 from the Regional Office, Vijayawada to Benz Circle branch just two months prior to the impugned order came to be passed transferring him from Benz Circle branch to Narsaraopet branch. The reason assigned by the respondents in their counter for transferring the petitioner from Benz Circle branch to Narsaraopet branch, which is outside the District, is that the Benz Circle branch had closed its evening counter w.e.f. 18.12.2006, that there are two posts of Computer Terminal Operators in Narsaraopet branch – one post is kept vacant and the other was occupied by a physically handicapped person, who sought reversion as clerk, which was accepted in the month of August, 2006. As on the date, namely 20.10.2006, when the petitioner was transferred from the Regional Office at

Vijayawada to Benz Circle branch, admittedly, as is evident from the counter of the respondents-Bank, there were two posts of Computer Terminal Operators vacant in Narsaraopet branch, and if really there was any administrative necessity or exigency, the respondents would have transferred the petitioner from the Regional Office at Vijayawada directly to Narsaraopet branch, but they did not do, and instead, transferred the petitioner to Benz Circle branch. The fact that the petitioner's transfer is not *bona fide* is evident from the fact that on the next day of his staging demonstration after office hours protesting the issuance of Circular dated 27.12.2006 by the respondents, he was transferred from Benz Circle to Narsaraopet, and in fact, this is the very case of the petitioner.

The respondents admit the fact that the petitioner is the State President of the Central Bank of India Employees Association, Andhra Pradesh. As per the policy guidelines issued in June 1992, the office bearers of the award staff union can only be transferred/rotated within the city only. The petitioner being an office bearer, the respondents could not have moved him outside the city or outside the District. The petitioner, as is evident from the copies of the muster roll, produced by the respondents, is placed at Sl. No.5 in the seniority list of employees of clerical cadre in Benz Circle branch, and he has just put in two months of service in the said branch, and it is clear that in his transfer, the length of his service at Benz Circle branch, was required to be taken as per the Memorandum of Settlement dated 07.11.2006, which in fact, was not taken into consideration. Had the respondents-Bank taken the length of stay of the petitioner at Benz Circle branch, the petitioner could not have been transferred, for he came to be transferred to the said branch, just two months prior to the

impugned transfer order came to be passed by the 2nd respondent-Regional Manager. The respondents having transferred the petitioner on rotation just two months back, could not have transferred him once again, contrary to the very policy framed by them.

There can be no dispute on the proposition of law that no government servant or employee of a public undertaking has any right to be retained at a particular place, and he is liable to be transferred anywhere, and more so when transfer is an incidence of service, and the Courts should not ordinarily, interfere in such matters, but it is equally well settled proposition of law that if the transfer order has been made by *mala fide* exercise of power or made in violation of statutory provisions, which prohibit transfer, then the Courts can interfere with such transfer orders. To this very effect are the judgments of the apex Court in **Union of India v. S.L. Abbas** and **National Hydroelectric Power Corporation Ltd. v. Shri Bhagwan**, on which the learned Standing Counsel for the respondents-Bank placed heavy reliance. Likewise, it is obligatory for the employer to adhere to the guidelines framed by it, for the rule enunciated in **Vitraelli v. Seaton**, requires an executive agency to be rigorously held to the standards by which it professes its action to be judged. The rule enunciated in **Vitraelli v. Seaton**, has been relied upon by the apex Court in **Ramana Dayaram Shetty v. International Airport Authority of India**[5] and **B.S. Minhas v. Indian Statistical Institute**.

Though the respondents-Bank contends that due to administrative exigencies the petitioner has been transferred from Benz Circle branch to Narsaraopet branch, the fact

remains, the office order dated 28.12.2006, issued by the 2nd respondent-Regional Manager, transferring the petitioner from Benz Circle branch to Narsaraopet branch, is in violation of its own guidelines and is a sequel to the demonstration which he staged along with other employees after the office hours protesting the issuance of Circular dated 27.12.2006. The transfer order has not only been made in flagrant violation of the Memorandum of Settlements, entered into by the Banks with the Trade Unions and award staff Union, but also without following the procedure contemplated for identification and deployment of surplus staff, issued in the Circular. The Memorandum of Settlements dated 02.06.2005 and 07.11.2006, entered into by the management of the respondents-Bank under Section 2(p) of the Industrial Disputes Act, 1947, with the Trade Unions and award staff Union, are binding on them under Section 18(1) of the Industrial Disputes Act, 1947 read with Rule 58 of the Industrial Disputes (Central) Rules, 1957, and as such, the respondents-Bank are statutorily bound to comply with the conditions stipulated therein, and their failure to do so, would be violation of the rule enunciated in **Vitraelli v. Seaton**, referred to above. In that view of the matter, the impugned transfer order dated 28.12.2006, made by the 2nd respondent-Regional Manager, transferring the petitioner from Benz Circle branch to Narsaraopet branch, cannot be sustained, and is liable to be set aside.

Accordingly, the writ petition is allowed, and the impugned transfer order dated 28.12.2006, issued by the 2nd respondent-Regional Manager, transferring the petitioner from Benz Circle branch to Narsaraopet branch, is set aside. No costs.

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N.V. RAMANA, J.

Dated: 2nd February, 2007.

Note:

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[1] AIR 1993 SC 2444
[2] (2001) 8 SCC 574
[3] AIR 1984 SC 364
[4] (1959) 359 US 535
[5] AIR 1979 SC 1628